

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6584 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJA INDUSTRIES

Versus

UNION OF INDIA

Appearance:

MR DG TRIVEDI for Petitioner
MR MUKESH R SHAH for Respondents.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/12/1999

ORAL JUDGEMENT

Rule, service of which is waived by learned Addl.
Standing Counsel Mr M.R.Shah for the respondents.

In this petition under Article 226 of the Constitution of India, challenge is against the order in the form of intimation passed by the Assistant Commissioner on 25.2.99, whereby, the petitioner Company came to be notified that since the appeal of the petitioner pending before CEGAT was dismissed on 31.12.98 there was no dispute or appeal pending as per the provisions of section 95(ii)(c) of the Finance Act, 1998. It was, therefore, informed by the respondent that there was no dispute and therefore the declaration filed by the petitioner Company came to be filed. During the course of hearing of the petition before us, today, our attention was invited to the fact that the petitioner has filed a reference application on 27.1.99 before the CEGAT, Mumbai, copy whereof was sent by speed post on the same day on 27.1.99 and copy whereof is also produced at Annexure C. It is the case of the petitioner that on 31.1.99, declaration form under KVSS 1998, came to be filed. Not only that it came to be acknowledged by the Superintendent of Central Excise, HQ Office, Ahmedabad-II. A copy of said declaration along with acknowledgment has also been annexed to this petition. This important aspect appears to have been not, seriously, examined and considered. Since the vital document is not considered and examined, which is likely to have a material bearing on the issue, it would be appropriate to remand the matter to respondent No.2 for reconsideration of the declaration form in the light of the facts and circumstances brought on record. It would be also open for the petitioner to submit necessary proof about the existence of pendency of the reference on the date of filing of declaration.

In the result, the petition is partly allowed. The respondent No.2 is directed to reconsider the declaration form of the petitioner taking into consideration of the facts and circumstances and decide it afresh in accordance with law, as early as possible. Rule is made, partly, absolute with no order as to costs.

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(vjn)